

Understanding The 2019 Changes To The SBIR & STTR Programs

A Review of the SBA's Policy Directive Amendments

August 29, 2019

Presented By
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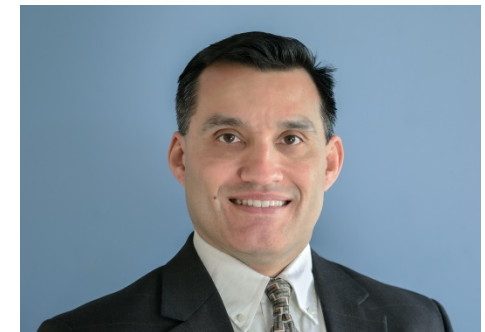


Understanding The 2019 Changes To The SBIR & STTR Programs

INTRODUCTIONS

Mark A. Amadeo

- Over 20 years experience as government counsel & law firm counsel
- LL.M. Georgetown University Law Center; J.D. University of Wisconsin Law School; B.A. Boston College
- Founder & Managing Partner of Amadeo Law Firm, PLLC
- Focus on Government Contracting & Technology
 - Review/negotiation: FAR/DFARS Compliance
 - Pre & Post Award Teaming, JV's & Subcontracts
 - Technology: IP Preservation & Commercialization



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About The SBIR/STTR Programs

- **America's Seed Fund**
- **SBIR vs. STTR**
- **Policy Directives**
- **Overview Webinar**



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Effective Date

- **May 2, 2019**
- **No Change To Existing SBIR/STTR Contracts**



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One Unified Directive



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Updated & Newly Defined Terms

Updated

-Intellectual Property

Newly Defined

-Computer Database

-Computer Software

-Computer Software
Documentation

-Form, Fit and Function Data

-Computer Programs

-Operations, Management,
Installation, or Training

Purposes (OMIT) Data

-Technical Data

-Data



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Updated & Newly Defined Terms

Prototype

- **A product, material, object, system or process, or a model thereof, regardless of whether it is in tangible, electronic, graphic or other form**
- **That is in development, at any stage prior to its intended ultimate commercial production and sale**
- **Includes Computer Programs embedded in hardware or devices**



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Updated & Newly Defined Terms

Prototype

- **Embedded Data May Be Protected SBIR/STTR Data**
- **Embedded Data Must Be Properly Marked**
- **Release of Prototypes During Protection Period Should be Monitored**



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Updated & Newly Defined Terms

SBIR/STTR Data

- **All data developed in performance of SBIR/STTR award**
- **Does not include contract/grant administration info**
- **Includes Technical Data and Computer Software**



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Updated & Newly Defined Terms

SBIR/STTR Data Rights

- **SBIR/STTR Technical Data Rights - SBIR/STTR Data that is Technical Data**
- **SBIR/STTR Computer Software Rights - SBIR/STTR Data that is Computer Software**
- **Unlimited Rights in**
 - **Form, Fit and Function Data**
 - **Operations, Maintenance, Installation or Training Purpose (OMIT) Data**
 - **Unmarked SBIR/STTR Data**



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Updated & Newly Defined Terms

SBIR/STTR Technical Data Rights and SBIR/STTR Computer Software Rights

- **Gov may use, modify, modify, disclose within Federal Gov**
- **Not for procurement, mfg or commercial purposes**
- **CSR – Gov may exercise these rights within Gov:**
 - **Use in Gov Computers**
 - **Modify, adapt or combine with other Computer Software**
 - **Archive or backup**
 - **Distribute to another Gov agency**



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Updated & Newly Defined Terms

**SBIR/STTR Technical Data Rights and
SBIR/STTR Computer Software Rights
Gov May Release Outside Fed Gov't**

- **With written permission, or**
- **If NDA in place, and**
 - **Narrowly tailored essential Gov't activities (TDR & CSR)**
 - **Gov't support services contractor (TDR & CSR)**
 - **Foreign governments for information and evaluation (TDR)**
 - **Non-government entities for purposes of evaluation (TDR)**



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Updated & Newly Defined Terms

Unlimited Rights (During and After PP)

Fed Gov's rights to use, modify, prepare derivative works, reproduce, release, display, in whole or part, in any manner, for any purpose, and to authorize others to do so

- **Unmarked SBIR/STTR Data**
- **Form, Fit and Function Data**
- **Operations, Maintenance, Installation or Training Purpose (OMIT) Data**



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SBIR/STTR Protection Period

**Period that Gov must protect SBIR/STTR Data under
SBIR/STTR Data Rights**

- **20 years from date of SBIR/STTR award**
- **No extensions during subsequent awards**



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Data Rights After Protection Period

Government Purpose Rights – may use or authorize others on its behalf to use for any activity in which Gov is a party, including:

- **Cooperative agreements with multi-national defense organizations**
- **Sales or transfers to foreign government, organizations**
- **Competitive procurements**

But does NOT include for commercial purposes



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Old Data Rights

FAR 52.227-20 – Civilian Agencies

- **Four-year Protection Period**
 - Use For Government Purposes
 - No disclosures to third parties without permission, except for support contractors
- **After Protection Period**
 - Use for Government Purposes
 - No disclosure prohibitions
 - Authorize others to use on its behalf for Government Purposes



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Old Data Rights

DFARS 252.227-7018 – Defense Agencies

- **Five-year Protection Period**
 - **SBIR Technical Data – Limited Rights:**
 - Use, modify and disclose within the Government
 - Limited disclosures to and use by third parties
 - **SBIR Computer Software – Restricted Rights:**
 - One computer, limited copies, transfers to other agencies
 - Use by support and service contractors, repair contractors
- **After Protection Period**
 - Unlimited rights



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Corrective Markings To SBIR/STTR Data

SBIR Data without required legend or notice

- **Six months after delivery to request correction**
- **Agency may approve longer period for good cause**

Markings Are Important

- **Data must be properly marked to receive protections**
- **No liability for access, use, modification, disclosures of unmarked data**



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Phase III Preference Clarified

Phase III Awards To Phase I and II Awardees

- **Perform market research – is prior awardee is available, capable and willing**
- **Negotiate in good faith**
- **If pursuing Phase III work with awardee, must issue sole-source award**
- **If agency does not issue sole-source award**
 - **Must document decision, provide copy to SBA**
 - **Should use other means to provide preference – e.g. subcontracts to prior awardee**



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STTR Partnerships With Multiple Institutions

- **At least 30% work performed by one of the research institutions**



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Final Thoughts



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Policy Directive Amendments
Questions?**

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